



May 17, 2000

Mr. Jeffrey L. Schrader
Assistant Criminal District Attorney
Civil Section
Bexar County Justice Center
300 Dolorosa, 5th Floor
San Antonio, Texas 78205-3030

OR2000-1952

Dear Mr. Schrader:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 136229.

The Bexar County Sheriff's Office (the "county") received a request for any and all information related to the arrest and incarceration of a named individual on a specific date. You claim that the information is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.131 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.¹

Section 552.301 of the Government Code requires a governmental body to release requested information or to request a decision from the Attorney General within 10 business days of receiving a request for information the governmental body wishes to withhold. You state that you received this request for information on March 30, 2000. However, the requestor has submitted to this office a copy of a request for the information at issue dated February 23, 2000; attached to the February 23rd request is a copy of a signed return receipt (number Z 383414255) indicating this request was received by the county on February 24, 2000. Thus, it appears from the documents submitted to this office that the county received the request for information on February 24, 2000. You did not request a decision from this

¹Initially, we note that it appears that the requestor has already received a large portion of the information the county claims to be excepted from disclosure. Because there seems to be some confusion as to which documents have been released, we issue this ruling as if none of the information at issue has been released to the requestor.

office until April 10, 2000. Consequently, you failed to request a decision within the 10 business days required by section 552.301(b) of the Government Code.

When a governmental body fails to request a decision within 10 business days of receiving a request for information, the information at issue is presumed public. Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); *City of Houston v. Houston Chronicle Publishing Co.*, 673 S.W.2d 316, 323 (Tex. App.--Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information and overcome this presumption. See *Hancock*, 797 S.W.2d at 381-82. You claim that the documents found in Exhibits C and D are excepted from disclosure under section 552.108. However, section 552.108 will not overcome the presumption of openness imposed by section 552.302. Therefore, Exhibits C and D are not excepted from public disclosure under section 552.108. However, the application of sections 552.101, 552.130 and 552.131 will overcome the presumption of openness.

Section 552.131 of the Government Code excepts from disclosure information obtained or maintained by the Texas Department of Criminal Justice (the "department") which relates to an inmate who is confined in a facility operated by or under contract with the department. You argue that, from a policy standpoint, you can "think of no reason why the Texas Legislature would intend to distinguish between inmates incarcerated in the Texas Department of Criminal Justice and inmates incarcerated in a county jail." However, the legislature clearly limited, through the plain language of the statute, the application of section 552.131 to the department. In Texas, it is presumed that every word of a statute must have been used for a purpose. *Cameron v. Terrell & Garrett, Inc.*, 618 S.W.2d 535, 540 (Tex. 1981). Had the legislature intended the protection of section 552.131 be extended to inmates incarcerated in facilities other than those of the department, the language of the statute would reflect that intent. As such, we find section 552.131 to be inapplicable to the information at hand. The county may not withhold any of the information at issue under section 552.131.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses common law privacy and excepts from disclosure private facts about an individual. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Therefore, information may be withheld from the public when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Id.* at 685; Open Records Decision No. 611 at 1 (1992).

The constitutional right to privacy protects two interests. Open Records Decision No. 600 at 4 (1992) (citing *Ramie v. City of Hedwig Village*, 765 F.2d 490 (5th Cir. 1985), *cert. denied*, 474 U.S. 1062 (1986)). The first is the interest in independence in making certain important decisions related to the “zones of privacy” recognized by the United States Supreme Court. Open Records Decision No. 600 at 4 (1992). The zones of privacy recognized by the United States Supreme Court are matters pertaining to marriage, procreation, contraception, family relationships, and child rearing and education. *See id.*

The second interest is the interest in avoiding disclosure of personal matters. The test for whether information may be publicly disclosed without violating constitutional privacy rights involves a balancing of the individual’s privacy interests against the public’s need to know information of public concern. *See* Open Records Decision No. 455 at 5-7 (1987) (citing *Fadjo v. Coon*, 633 F.2d 1172, 1176 (5th Cir. 1981)). The scope of information considered private under the constitutional doctrine is far narrower than that under the common law; the material must concern the “most intimate aspects of human affairs.” *See* Open Records Decision No. 455 at 5 (1987) (citing *Ramie v. City of Hedwig Village*, 765 F.2d 490, 492 (5th Cir. 1985), *cert. denied*, 474 U.S. 1062 (1986)). You argue that the identity of the complainant in the instant case may be protected because the complainant is a four-year old child. This office has determined that the identities of juvenile victims of accidents and non-sexual crimes are not protected by common law privacy, but may be protected by constitutional privacy in some cases. Open Records Decision No. 628 (1994). For example, there may be circumstances where disclosure of the identity of a juvenile crime or accident victim may detrimentally influence family relationships or child rearing, or may involve the “most intimate aspects of human affairs.” *Id.* at 6. We do not believe the case at hand involves the most intimate aspects of human affairs. Thus, the identity of the juvenile complainant may not be withheld from disclosure under section 552.101.

The submitted documents also include a custodial death report. This office has concluded that Part I of a custodial death report is public information in accordance with article 49.18(b) of the Code of Criminal Procedure. Open Records Decision No. 521 (1989). Parts II through V of the report are not public information. *Id.* The county must release Part I of the custodial death report to the requestor.

The Texas Medical Practice Act (“MPA”), in section 159.002(b) of the Occupations Code provides:

A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

We have marked the documents that you must withhold from public disclosure pursuant to section 159.002(b). Those documents may be released only in accordance with the MPA. Open Records Decision No. 598 (1991).

Federal regulations prohibit the release of criminal history record information (“CHRI”) maintained in state and local CHRI systems to the general public. *See* 28 C.F.R. § 20.21(c)(1) (“Use of criminal history record information disseminated to noncriminal justice agencies shall be limited to the purpose for which it was given.”), (2) (“No agency or individual shall confirm the existence or nonexistence of criminal history record information to any person or agency that would not be eligible to receive the information itself.”). Section 411.083 provides that any CHRI maintained by the Department of Public Safety (“DPS”) is confidential. Gov’t Code § 411.083(a). Similarly, CHRI obtained from the DPS pursuant to statute is also confidential and may only be disclosed in very limited instances. *Id.* § 411.084; *see also* § 411.087 (restrictions on disclosure of CHRI obtained from DPS also apply to CHRI obtained from other criminal justice agencies). You must withhold, under the above-referenced provisions, the CHRI in the submitted materials.

We note that the submitted information contains social security numbers. Social security numbers that were obtained or maintained by a governmental body pursuant to any provision of law enacted on or after October 1, 1990, are confidential pursuant to section 405(c)(2)(C)(viii)(I) of title 42 of the United States Code and must be withheld.

Finally, we note that section 552.130 of the Government Code excepts from disclosure information that relates to a motor vehicle operator’s or driver’s license or permit issued by an agency of this state or a motor vehicle title or registration issued by an agency of this state. Therefore, you must withhold all Texas driver’s license numbers, license plate numbers, and VIN numbers.

In summary, Parts II through V of the custodial death report, any medical records, criminal history information, and all Texas driver’s license numbers, license plate numbers, and VIN numbers must be withheld from disclosure, pursuant to the authority discussed above. Part I of the custodial death report and the rest of the submitted information must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.–Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Amanda Crawford
Assistant Attorney General
Open Records Division

AEC/nc

Ref: ID# 136292

Encl. Submitted documents

cc: Mr. Robert W. Wilson
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(w/o enclosures)